

The fifth wave of EU Russia sanctions

10 April 2022

After several serious war crimes committed by the Russian army in Ukraine, the EU has once again significantly expanded its sanctions against Russia. While some of the new sanctions extend existing prohibitions, most new sanctions provisions contain completely new trade restrictions. We summarised the main developments in this briefing.

New listings of individuals and companies

Annex I to Regulation (EU) No 269/2014 is expanded by the new Implementing Regulation (EU) 2022/581, containing new listings of over 200 individuals and several companies and institutions. Most notably, the second largest bank in Russia, VTB Bank, was added to Annex I as well as Sovcombank, Novikombank and Otkritie FC Bank. The EU also added various Russian companies to the list, including

- Russian Machines and its group companies Arzamas Machine-Building Plant and Military Industrial Company,
- the four companies Ruselectronics, Kalashnikov Concern, TECMASH, and United Engine Corporation that are associated with Rostec, and
- military producers and shipmakers Tactical Missiles Corporation, Klimov, More Shipyard, Yantar Shipyard, Omsktransmash and Sozvezdie Concern.

Finally, the State Transport Leasing Company GTLK, which is engaged in leasing and trading of air and sea vehicles, was included in Annex I.

Under Article 2 of Regulation (EU) No 269/2014, the persons and entities listed under Annex I are subject to an asset freeze, meaning that it is prohibited to make funds and economic resources available directly or indirectly to them. Pursuant to the new Article 6b para. 2 of this regulation, transactions with the four newly listed banks may be authorized by Member States authorities if they are necessary for the termination by 9 October 2022, of operations, contracts, or other agreements, including correspondent banking relations, concluded with those entities before 8 April 2022.

A further newly added general exception allows for the authorization of transactions in connection with the sale and transfer of proprietary rights owned by a listed person if the proceeds of such sale and transfer remain frozen. On the one hand, this means that EU subsidiaries of a listed company can be acquired if the Member State authority grants approval and the purchase price is frozen. However, non-EU subsidiaries of a listed company may still not be purchased, even if the purchase price is frozen.

Ban of ships and vessels from EU ports

Pursuant to the new Article 3ea of Regulation (EU) No 833/2014, it is prohibited, as of 16 April 2022, to provide access to EU ports to any vessel registered under the flag of Russia. In order to prevent circumvention, this prohibition also covers vessels that have changed their Russian flag or their registration, to the flag or register of any other state after 24 February 2022. The prohibition is not limited to vessels carrying cargo but also includes specific yachts and recreational craft.

Article 3ea provides for exemptions, e.g. for vessels carrying natural gas or pharmaceutical, medical, agricultural and food products into the EU.

Ban of Russian and Belarusian road transport companies from the EU

According to newly inserted Article 3l of Regulation (EU) No 833/2014, road transport undertakings established in Russia are now prohibited from transporting goods by road into the EU. The provision permits transports until 16 April 2022 if they started before 9 April 2022 and the transport vehicle was already in the EU on 9 April 2022 or needs to transit through the EU in order to return to Russia. They are not banned if they transport mail as a universal service. Member State authorities can authorize the transport of specific goods, necessary for the purchase, import or transport, *inter alia*, of natural gas and oil, or pharmaceutical, medical, agricultural and food products into the EU.

Regulation (EC) No 765/2006 now provides for the same prohibition in connection with Belarusian road transport undertakings.

Ban of Russian and Russian owned companies from public contracts

Pursuant to new Article 5k of Regulation (EU) No 833/2014, Russian companies and individuals – as well as non-Russian companies majority-owned by, or acting on behalf or at the direction of Russian companies or individuals – are banned from public procurement procedures that are covered by the EU procurement directives (i.e. public contracts and concessions exceeding specific thresholds) as well as most procurement procedures that are subject to exemptions from these directives. The prohibition does not only apply to the contractor but also to subcontractors, suppliers or entities whose capacities are being relied on within the meaning of the public procurement directives, where they account for more than 10 % of the contract value. In our view, this covers also situations where more than one subcontractor or supplier jointly account for more than 10 % of the contract value.

Of equal importance is the fact that existing public contracts with these companies may no longer be continued. Such contracts must therefore be terminated immediately, unless an exemption applies. These exemptions cover, *inter alia*, contracts related to civil nuclear capabilities and facilities, intergovernmental cooperation in space programmes, the provision of strictly necessary goods or services which can only be provided by the

barred persons, as well as the purchase, import or transport of natural gas, oil, specific metals, or coal and other solid fossil fuels. Coal and other solid fossil fuels are only exempted until 10 August 2022 and if they are listed in Annex XXII to Regulation (EU) No 833/2014.

Prohibition of exports

New Article 3k of Regulation (EU) No 833/2014 prohibits the sale, supply, transfer or export, directly or indirectly, of goods listed in Annex XXIII to anyone in Russia or for use in Russia. This is accompanied by prohibitions on the provision of related technical assistance, brokering services or other services, and on the provision of financing or financial assistance. Annex XXIII lists a whole range of goods on about 30 pages, including *inter alia*

- industrial robots,
- rail locomotives powered by electric accumulators, road tractors for semi-trailers, seats for aircraft and motor vehicles,
- additives for oil lubricants, finishing agents, biodiesel,
- steam turbines, specific engines and motors, supported catalysts, and specific brakes,
- specific tubes, pipes and hoses,
- chalk, specific products of iron and steel,
- chemicals and gases like Hydrogen, Nitrogen and Oxygen,
- colours, lakes and printing inks, films,
- doors and windows, specific wood, papers and paperboards,
- tiles, building bricks and roofing tiles,
- cranes, bulldozers, excavators, and shovel loaders as well as machinery for public works and building,
- fabrics and yarn.

Article 3k provides for a grandfathering clause that allows the execution until 10 July 2022 of contracts concluded before 9 April 2022. Member State authorities may authorize exports or services which are necessary for humanitarian purposes.

The already existing Annex VII, which concerns high-tech goods, is expanded to include, inter alia, certain equipment for oil production or exploration, quantum technology, microscopes and detectors, manufacturing equipment and machine tools.

Annex XVIII, which already lists luxury goods, now includes, among others, pearls and optical instruments.

Prohibition of imports

New Article 3i of Regulation (EU) No 833/2014 prohibits to import or transfer, directly or indirectly, goods which are listed in Annex XXI into the EU if they originate in Russia or are exported from Russia. This prohibition is again accompanied by prohibitions on the provision of related technical assistance, brokering services or other services, and on the provision of financing or financial assistance. Annex XXI includes, *inter alia*, cement, phosphates, phenols, wood and wood products, silver, specific aluminium plates, fertilisers, pneumatic rubber tires, cruise ships, excursion boats, ferry-boats, cargo ships seafood and caviar. The prohibitions do not apply to the execution until 10 July 2022 of contracts concluded before 9 April 2022.

The newly added Article 3j of Regulation (EU) No 833/2014 sets out a very similar prohibition concerning coal and other solid fossil fuels listed in Annex XXII. The list of banned coal products includes, for instance, coal, lignite, peat, coke, pitch and pitch coke, coal gas as well as tar distilled from coal, from lignite or from peat. The grandfathering clause in Article 3j covers the execution until 10 August 2022 of contracts concluded before 9 April 2022.

Further restrictions in connection with the financial sector

Article 5b of Regulation (EU) No 833/2014 already set out a prohibition to accept any deposits from Russian individuals or companies if the total value of deposits exceeds EUR 100,000. This existing prohibition is now supplemented in Article 5b para. 2 by another prohibition to provide crypto-asset wallet, account or custody services to Russian individuals or companies if the total value of crypto-assets per wallet, account or custody provider exceeds EUR 10,000. This prohibition therefore already applies to a much smaller sum.

Pursuant to the newly inserted Article 5l of Regulation (EU) No 833/2014, it is prohibited to provide support, including financing and financial assistance or any other benefit under a Union, Euratom or Member State national programme and contracts within the meaning of Regulation (EU, Euratom) 2018/1046, to any legal person, entity or body established in Russia with over 50 % public ownership or public control. It is not entirely clear from the wording of the provision which exact conduct is prohibited. However, due to the reference to public budget funds, the provision is, in our view, to be understood

as being directed only at institutions that administer such funds. As long as this understanding is not confirmed by the EU Commission, there remains a legal uncertainty regarding the scope of this provision. Article 5l contains an exemptions clause that covers different circumstances such as phytosanitary and veterinary programmes, intergovernmental cooperation in space programmes, the safety of civil nuclear capabilities as well as civil nuclear cooperation, or climate and environmental programmes.

Finally, new Article 5m of Regulation (EU) No 833/2014 provides for a prohibition to register a trust (or to provide a registered office, business or administrative address as well as management services to a trust) having as a trustor or a beneficiary either (i) a Russian individual or company, or (ii) a natural or legal person that is owned or controlled by a Russian individual or company, or (iii) a natural or legal person acting on behalf or at the direction of a Russian individual or company. In addition, it is prohibited as of 10 May 2022 to act as, or arrange for another person to act as, a trustee, nominee shareholder, director, secretary or a similar position, for such a trust. However, these prohibitions do not apply when the trustor or beneficiary is a national of a Member State or a natural person having a temporary or permanent residence permit in a Member State. Pursuant to the grandfathering clause in Article 5m para. 3, the above prohibitions do not apply to the operations that are strictly necessary for the termination by 10 May 2022 of contracts which are not compliant with this Article concluded before 9 April 2022. Where humanitarian issues are concerned or democratisation processes in Russia are at stake, Member States may grant authorization for the above actions on a case-by-case basis.

We are at your disposal at any time to answer questions on the practical implementation as well as on the scope of application of these sanctions. Please do not hesitate to contact [Pascal Friton](#), [Roland M. Stein](#), [Florian Wolf](#), [Laura Louca](#) or [Tobias Ackermann](#).